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(WOODLING, KROST AND RUST) KENNETH L. MITCHELL 9213 CHILLICOTHE ROAD KIRTLAND, OH 44094			SHARP, JEFFREY ANDREW	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/824,915

Filing Date: April 15, 2004

Appellant(s): SELLE, STEPHEN

Kenneth L. Mitchell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04 August 2006 appealing from the Office action
mailed 31 October 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

Correction to Issue 5: Reference to Liestner in "Issue 5" should include U.S. Patent No. 6,209,722.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner:

Claim 4 was previously rejected under 35 USC 112, second paragraph, as being indefinite. After further consideration, the rejection of claim 4 under 35 USC 112 has been withdrawn, and therefore Issue 1 and all arguments and/or remarks corresponding thereto are moot.

Claim 2 was previously rejected under 35 USC 103(a) as being obvious over Applicant's admission of prior art, in view of either Selle US-6,640,968 or Liestner US-6,209,722. After further consideration, the rejection of claim 2 under 35 USC 103(a) as being obvious over Applicant's admission of prior art, in view of either Selle US-6,640,968 or Liestner US-6,209,722 has been withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

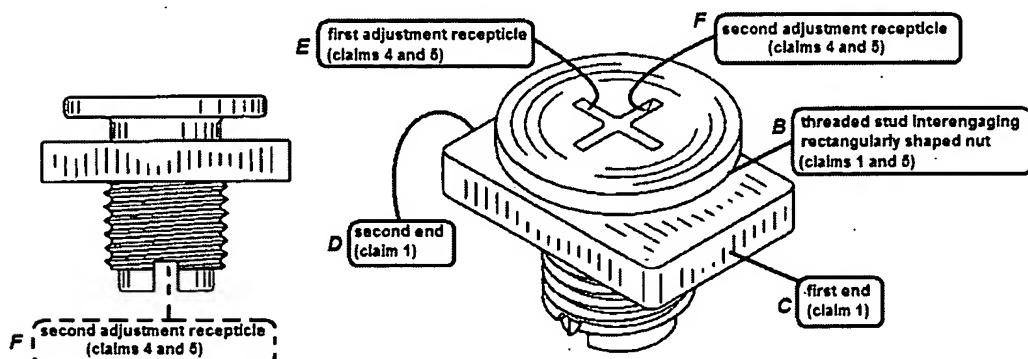
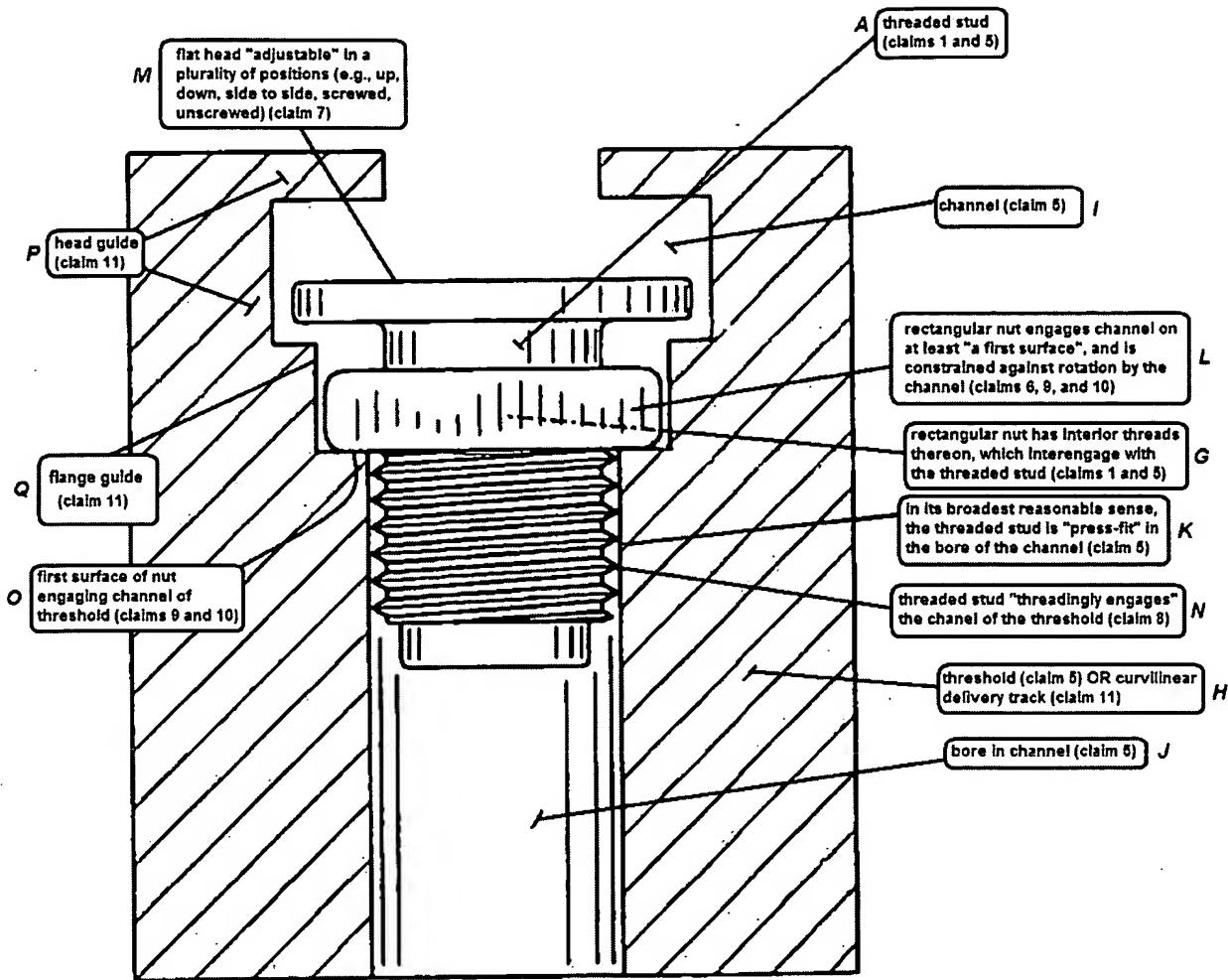
4,352,258	Bursk et al.	10-1982
5,993,320	Selle	11-1999
6,185,870	Mettler	2-2001
6,640,968	Selle	11-2003
6,209,722	Liestner	4-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

► Claims 1 and 3-11 stand rejected under 35 U.S.C. 103(a) as being obvious over Applicant's admission of prior art, in view of either Selle US-6,640,968 or Liestner US-6,209,722.

For clarity and illustrative purposes, the examiner has annotated Applicant's admission of prior art in the drawings, carefully labeling each positively recited structural feature.



(PRIOR ART)

Examiner's reasonably broad interpretation of Applicant's admitted prior art.

In short, and when the claims are given their broadest reasonable interpretation, Applicant substantially discloses a prior art fastener/threshold adjustment device comprising each and every limitation found in claims 1 and 3-11, **with the exception of raised flanges** located at first and second ends of the nut. Applicant alleges that these flanges are advantageous, because they serve to prevent jamming (i.e., "shingling") within a curvilinear delivery track (also known in the art as a "feed" or "feeding" track, a "magazine", or a "hopper").

As for claim 1, Applicant discloses as prior art, a fastener comprising a threaded stud (A), a rectangularly-shaped nut (B) having first (C) and second (D) ends, said threaded stud (A) interengaging said rectangularly-shaped nut (B).

As for claim 4, Applicant discloses as prior art, a threaded stud including first (E) and second (F) adjustment receptacles.

As for claim 5, Applicant discloses as prior art, a threshold adjustment device comprising a threaded stud (A), an adjustment receptacle (E,F), a rectangularly shaped nut (B), said threaded stud interengaging said nut (G), a threshold (H) having a channel (I), said channel including a bore (J) therein, said threaded stud being press-fit (K) in said bore (J). Applicant also admits on page 3, line 4 of the specification that it is known to "press-fit" a prior art fastener into a threshold.

As for claim 6, Applicant discloses as prior art, a nut (B) being constrained against rotation (L) by said channel (I).

As for claim 7, Applicant discloses as prior art, a flat head (M), which is adjustable in a plurality of positions.

As for claim 8, Applicant discloses as prior art, a threaded stud (A) threadingly engaging (N) the channel (I) of the threshold (H).

As for claim 9, Applicant discloses as prior art, the nut (B) having a first surface (O) and said first surface (O) of said nut (B) engages the channel (I) of the threshold (H).

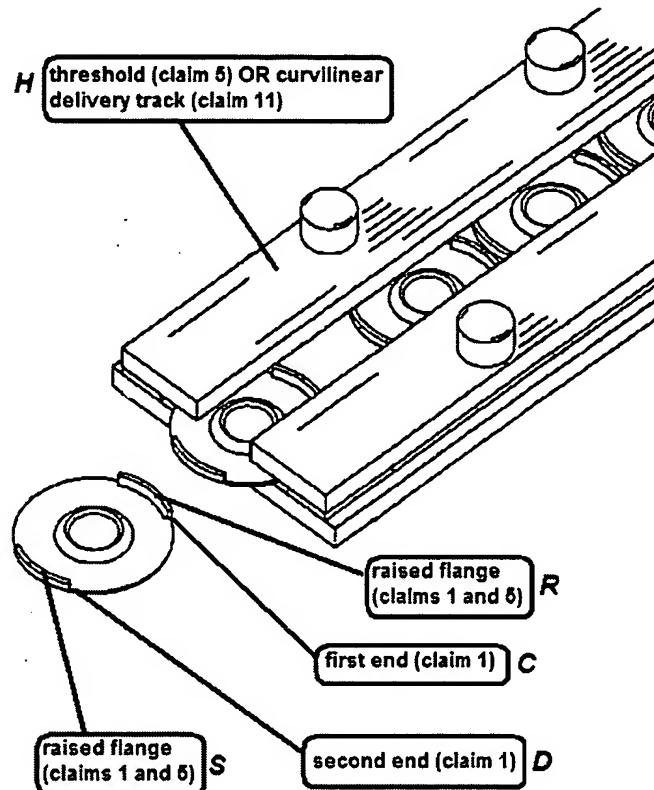
As for claim 10, Applicant discloses as prior art, the nut (B) includes a first surface (O) and said first surface (O) of said nut (B) engages the channel (I) of the threshold (H).

As claim 11 is best understood, Applicant discloses as prior art, a curvilinear delivery track (H) for delivering a plurality of fasteners, said delivery track (H) includes a head guide (P) and a flange guide (Q). Examiner notes that there appears to be no clear antecedent basis for the limitation "said head guides" (plural emphasis added) on line 5 of claim 11. Examiner further notes that claim 11 has been interpreted as not positively reciting "fasteners", since the preamble only positively recites that the intended use of the curvilinear delivery track is for delivering a plurality of fasteners (emphasis added). The word "for" merely signifies an intended use of the positively recited curvilinear track. Since it is believed by the examiner that no fasteners are positively claimed, the functional recitations are not given significant patentable merit. The curvilinear delivery track disclosed by Applicant is entirely capable of performing equally as well with flanged U-shaped nuts as with U-shaped nuts lacking raised flanges.

However, as previously stated, Applicant's admitted prior art fails to disclose **raised flanges** located on the first (C) and second (D) ends of the rectangular nut (B).

Selle US-6,640,968 suggests employing **raised flanges** (R, S) on first (C) and second (D) ends of a fastener element, so that when said fastener element is placed within a curvilinear

delivery track (H), said raised flanges (R,S) prevent shingling or jamming within said curvilinear delivery track (H). Refer to Selle US-6,640,968, column 1 lines 49-52 and column 3 lines 56-58.

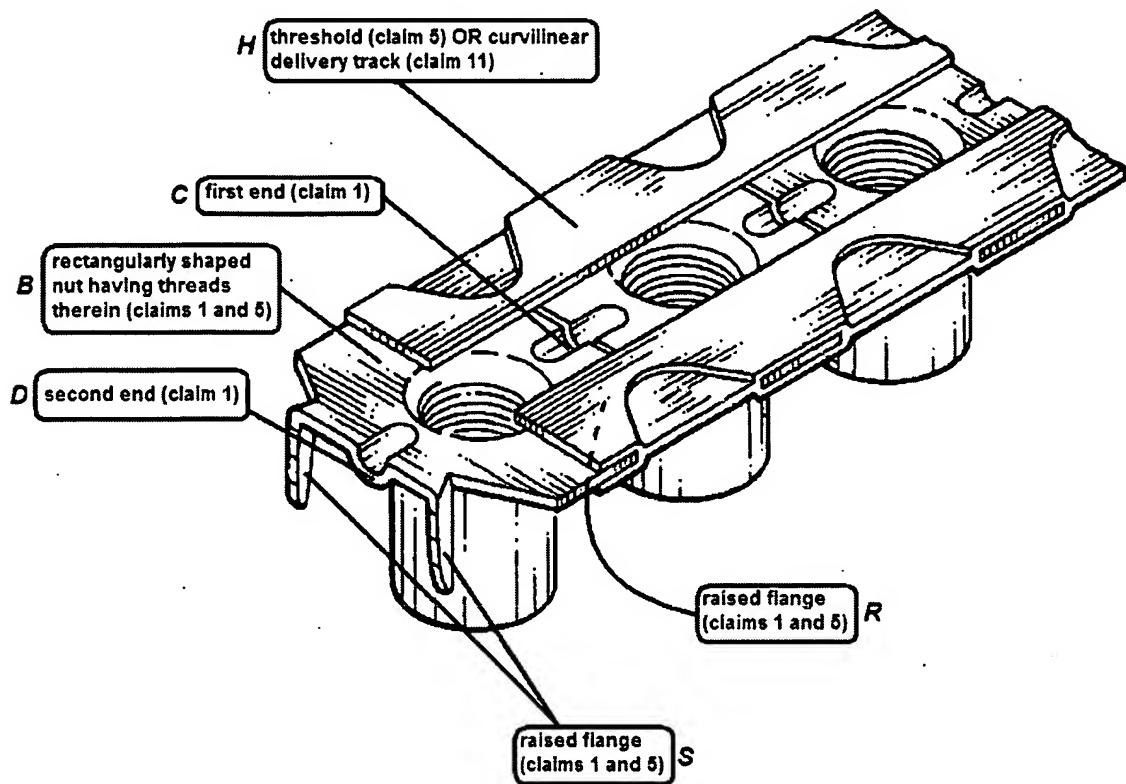


Selle US-6,640,968

Therefore, at the time of invention, it would have been obvious to those having an ordinary skill in the art, to modify the prior art rectangular nut (B) disclosed in Applicant's admission of the prior art, by employing raised flanges (R, S) on first (C) and second (D) ends of said rectangular nut (B) as suggested by Selle US-6,640,968, in order to prevent shingling or jamming of said rectangular nut (B) when disposed within a threshold (H) or a curvilinear delivery track (H).

Liestner US-6,209,722 suggests employing raised flanges (R,S) on first (C) and second (D) ends of a rectangular nut (B), so that when said nut (B) is placed within a curvilinear

delivery track (H), said raised flanges (R,S) prevent shingling or jamming of said nut (B) within said curvilinear delivery track (H).



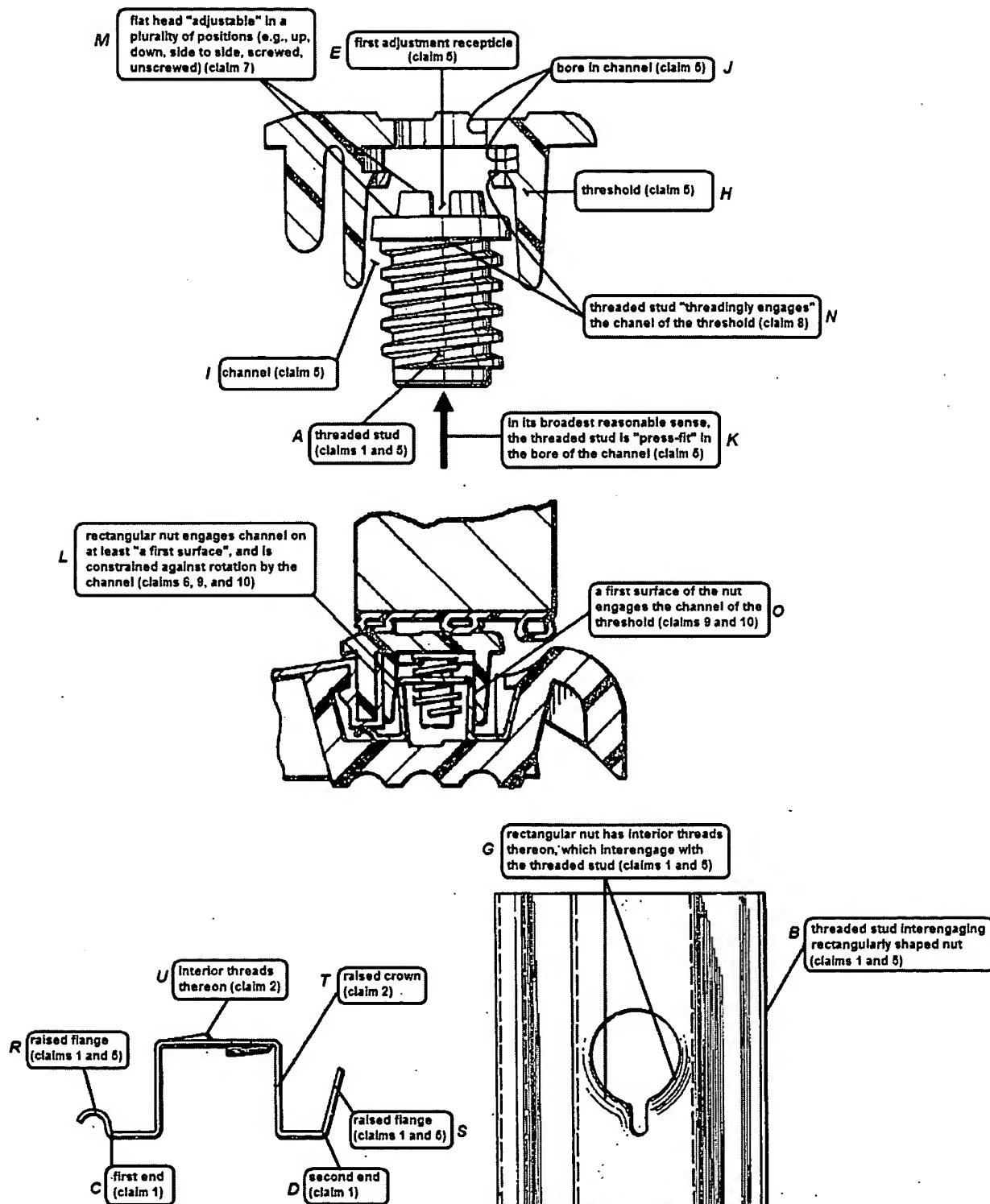
Liestner US-6,209,722

Therefore, at the time of invention, it would have been obvious to those having an ordinary skill in the art, to modify the prior art rectangular nut (B) disclosed in Applicant's admission of the prior art, by employing raised flanges (R, S) on first (C) and second (D) ends of said rectangular nut (B) as suggested by Liestner US-6,209,722, in order to prevent shingling or jamming of said rectangular nut (B) when disposed within a threshold (H) or a curvilinear delivery track (H).

Art Unit: 3677

► Claims 1-3 and 5-10 stand rejected under 35 U.S.C. 102(b) as being anticipated by Bursk et al. US-4,352,258.

For clarity and illustrative purposes, the examiner has annotated figures found within the Bursk et al. reference, carefully labeling each positively recited structural feature.



Examiner's reasonably broad interpretation of Bursk et al. US-4,352,258.

In short, and when the claims are given their broadest reasonable interpretation, the Bursk et al. reference substantially discloses a prior art fastener/threshold adjustment device comprising each and every limitation found in claims 1-3 and 5-11.

As for claim 1, the Bursk et al. reference discloses a fastener comprising a threaded stud (A), a rectangularly-shaped nut (B) having first (C) and second (D) ends each having a raised flange (R,S), said threaded stud (A) interengaging said rectangularly-shaped nut (B).

As for claim 2, the Bursk et al. reference discloses said rectangularly-shaped nut (B) includes a raised crown (T) having interior threads (U) thereon.

As for claim 3, the Bursk et al. reference discloses said raised flanges (R, S) extending upwardly partially enveloping said threaded stud (A).

As for claim 5, the Bursk et al. reference discloses a threshold adjustment device comprising a threaded stud (A), an adjustment receptacle (E), a rectangularly shaped nut.(B), said threaded stud interengaging said nut (G), a threshold (H) having a channel (I), said channel including a bore (J) therein, said threaded stud being press-fit (K) in said bore (J).

As for claim 6, the Bursk et al. reference discloses a nut (B) being constrained against rotation (L) by said channel (I).

As for claim 7, the Bursk et al. reference discloses a flat head (M), which is adjustable in a plurality of positions.

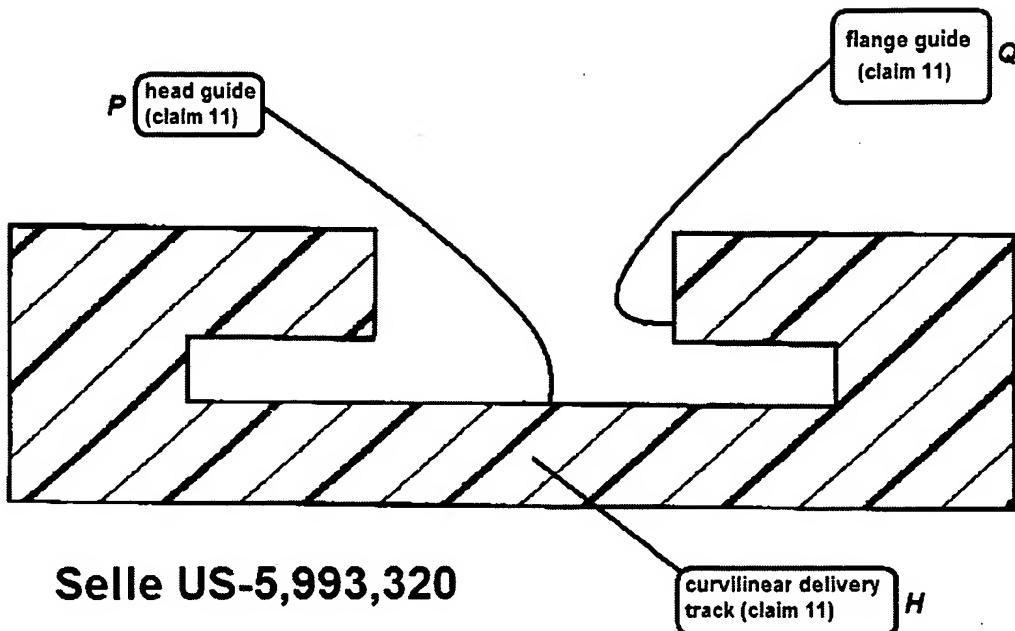
As for claim 8, the Bursk et al. reference discloses a threaded stud (A) threadingly engaging (N) the channel (I) of the threshold (H).

As for claim 9, the Bursk et al. reference discloses the nut (B) having a first surface (O) and said first surface (O) of said nut (B) engages the channel (I) of the threshold (H).

As for claim 10, the Bursk et al. reference discloses the nut (B) includes a first surface (O) and said first surface (O) of said nut (B) engages the channel (I) of the threshold (H).

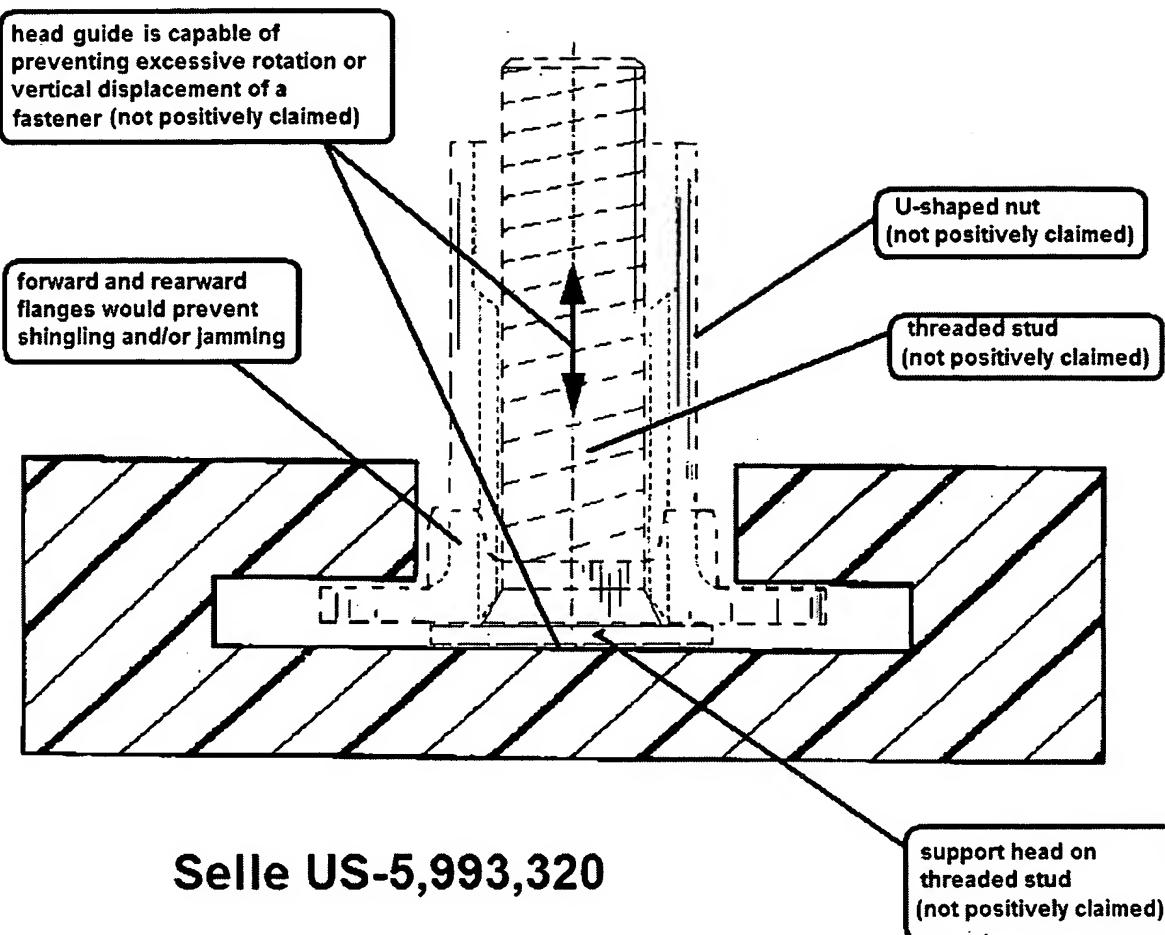
► Claim 11 stands rejected under 35 U.S.C. 102(b) as being anticipated by Selle US-5,993,320.

In short, and when claim 11 is given its broadest reasonable interpretation, the Selle reference discloses as prior art, a curvilinear delivery track (H) for delivering a plurality of fasteners, said delivery track (H) includes a head guide (P) and a flange guide (Q). Examiner notes that there appears to be no clear antecedent basis for the limitation "said head guides" (plural emphasis added) on line 5 of claim 11. Examiner further notes that claim 11 has been interpreted as not positively reciting "fasteners", since the preamble only positively recites that the intended use of the curvilinear delivery track is for delivering a plurality of fasteners (emphasis added). The word "for" merely signifies an intended use of the positively recited curvilinear track. Since it is believed by the examiner that no fasteners are positively claimed, the structural and function recitations directed to said fasteners are not given significant patentable merit since they only modify an intended use of the curvilinear delivery track.



Examiner's reasonably broad interpretation of Selle US-5,993,320.

Although the plurality of fasteners including a U-shaped nut and a threaded stud are not positively recited in claim 11, it is important to illustrate that the curvilinear delivery track disclosed by the Selle reference is inherently capable of performing the claimed intended use recitations, in order to satisfy the requirements of 35 U.S.C. 102. Accordingly, the examiner has clearly illustrated the capabilities of the curvilinear track disclosed by Selle below (dashed lines are examiner's sketch and are for illustrative purposes only):



Examiner's reasonably broad interpretation of Selle US-5,993,320.

► Claim 4 stands rejected under 35 U.S.C. 103(a) as being obvious over Bursk et al. US-4,352,258 in view of Mettler US-6,185,870.

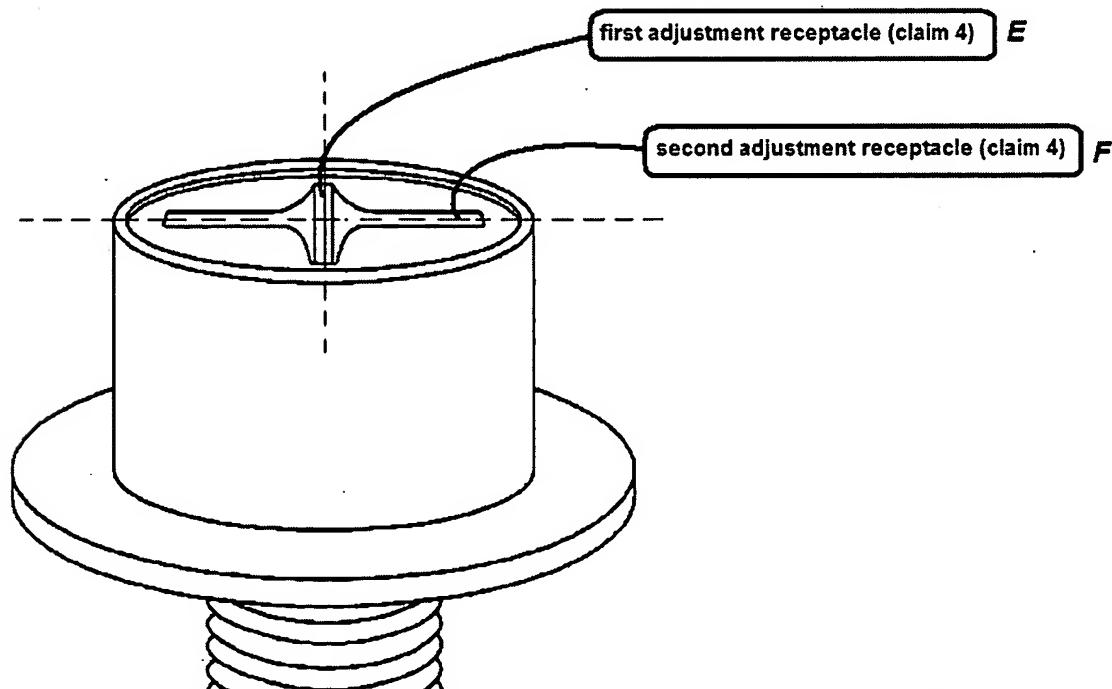
In short, and when the claims are given their broadest reasonable interpretation, the Bursk et al. reference substantially discloses a prior art fastener comprising each and every limitation found in claims 1 and 4 as described above, **with the exception of a second adjustment receptacle.**

As for claim 1, the Bursk et al. reference discloses a fastener comprising a threaded stud (A), a rectangularly-shaped nut (B) having first (C) and second (D) ends each having a raised flange (R,S), said threaded stud (A) interengaging said rectangularly-shaped nut (B).

As for claim 4, the Bursk et al. reference discloses the threaded stud (A) of the fastener having a first adjustment receptacle (E), which allows only a flat head screwdriver to enter therein.

However, as previously stated, the Bursk et al. reference fails to disclose expressly, a **second adjustment receptacle**.

Mettler US-6,185,870 suggests employing a **second adjustment receptacle (F)** to a fastener, in order to allow both a Phillips head screwdriver and a flat head screwdriver to enter therein, making it convenient to adjust said fastener, regardless of which type of screwdriver is readily available.



Examiner's reasonably broad interpretation of Mettler US-6,185,870

Therefore, at the time of invention, it would have been obvious to those having an ordinary skill in the art, to modify the fastener taught by Bursk et al., by further employing a **second adjustment receptacle** as suggested by Mettler, in order to provide the fastener with the ability to be adjusted by both a Phillips head screwdriver and a flat head screwdriver.

Applicant is reminded that claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). In the instant case, the examiner finds the term "adjustment receptacle" broad enough to encompass a slot portion used for the purposes of adjustment. Examiner notes that claim 4 does not specify the location of the second adjustment receptacle with respect to said first adjustment receptacle.

(10) Response to Argument

► In response to Issue 1, all arguments are moot. Claim 4 was previously rejected under 35 USC 112, second paragraph, as being indefinite. After further consideration, the rejection of claim 4 under 35 USC 112 has been withdrawn, and therefore Issue 1 and all arguments and/or remarks corresponding thereto are moot.

► In response to Issue 2, Applicant's arguments have been fully considered, but are not persuasive. Claims 1-3 and 5-10 stand rejected under 35 U.S.C. 102(b) as being anticipated by Bursk et al. US-4,352,258.

Issue 2 in regard to claim 1

Examiner acknowledges Applicant's statement that Bursk et al. allegedly teaches "upwardly turning part 85" and "raised or curved portion 88". Examiner has interpreted these structural features as "raised flanges" (claim 1), and/or the broader "flanges" (claim 5). In finally

rejecting claims 1-3 and 5-10 under 35 U.S.C. 102(b) as being anticipated by Bursk et al. US-4,352,258, the examiner used and provided the following plain definitions of "flange" to Applicant:

flange

n : a projection used for strength or for attaching to another object.

Source: WordNet ® 2.0, © 2003 Princeton University

flange (flānj)

n.

1. A projecting rim or edge.

Source: The American Heritage® Stedman's Medical Dictionary

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Therefore, the examiner takes the position that each of what Applicant refers to as "upwardly turning part 85" and/or "raised or curved portion 88" may be broadly construed as a "flange".

Applicant's argument that parts 85 and 88 are not raised flanges because they are "fittings" is not a persuasive argument. When given its broadest reasonable interpretation, the examiner takes the position that one of ordinary skill in the art would instantly recognize parts 85 and 88 of Bursk et al. as raised flanges.

Examiner acknowledges Applicant's statement that Bursk et al. teaches "parts 85, 88 are on the sides of the nut." Applicant appears to argue that the Bursk et al. reference fails to teach raised flanges 85, 88 to be located on the "ends" of the rectangularly-shaped nut. Examiner cannot find a good reason why it would not be proper to broadly construe a "side" as an "end".

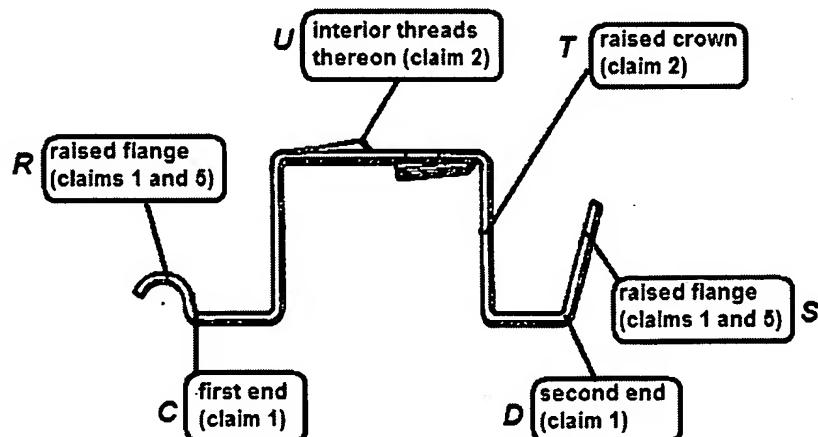
For example, where can one of ordinary skill in the art draw the distinction between "a side" of a rectangular object and "an end" of a rectangular object?

Applicant's argument that "parts 85, 88 of the [Bursk et al.] reference...are not symmetric" is not persuasive, simply because the term "symmetric" is not found anywhere in the claims.

Applicant's argument that parts 85 and 88 of the Bursk et al. reference are not "raised flanges", because they are instead "pieces of bent sheet metal" is not persuasive. A flange must be fabricated in some manner. The process used in forming the flanges is not what is in question. The question at hand is does parts 85 and 88 qualify as "raised flanges"?

Issue 2 in regard to claim 2

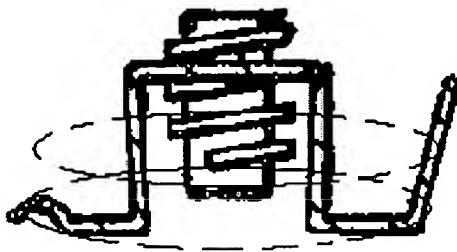
Applicant's argument that the Bursk et al. reference fails to show a crown is not persuasive. As clearly illustrated in the above rejection, the rectangularly-shaped nut disclosed by Bursk et al. has a raised crown (T) having interior threads (U) thereon.



Examiner's reasonably broad interpretation of Bursk et al. US-4,352,258.

Issue 2 in regard to claim 3

Applicant's allegation that parts 85 and 88 of the rectangularly-shaped nut taught by Bursk et al. are not raised flanges, and do not in any way envelope or surround the stud is acknowledged; however, Examiner feels that in its broadest reasonable interpretation, Bursk et al. does show raised flanges which broadly "envelope" or "surround" the threaded stud.

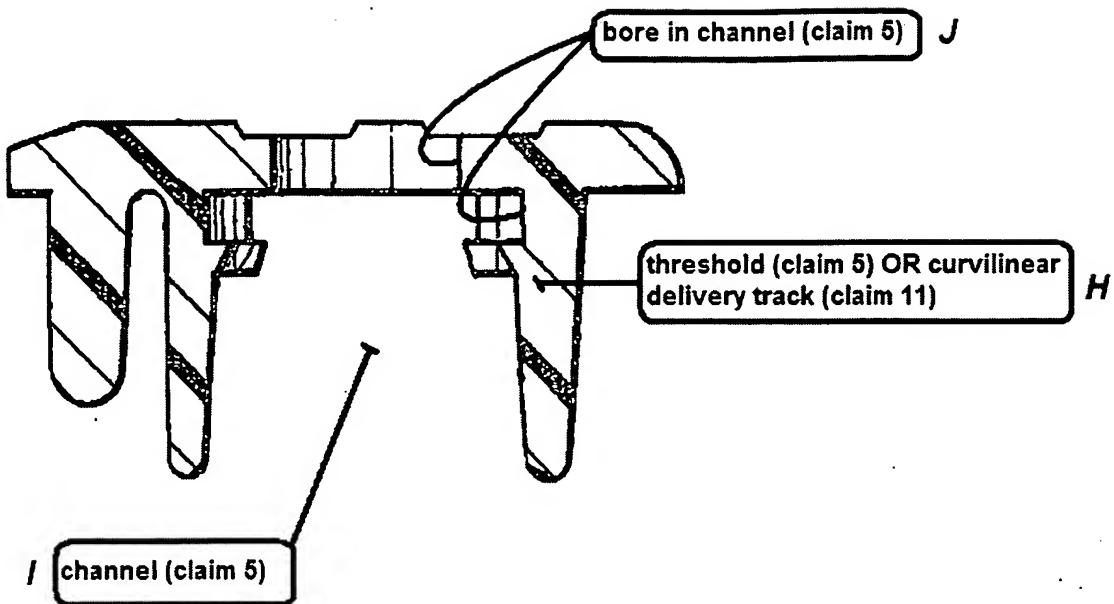


Examiner's reasonably broad interpretation of Bursk et al. US-4,352,258.

Issue 2 in regard to claim 5

In response to Applicant's argument that the threaded stud 60 taught by Bursk et al. is not "press-fit" into the bore of the channel, Bursk et al. clearly shows that the threaded stud 60 must be forced upwardly into a bore in the channel in order to be secured thereto.

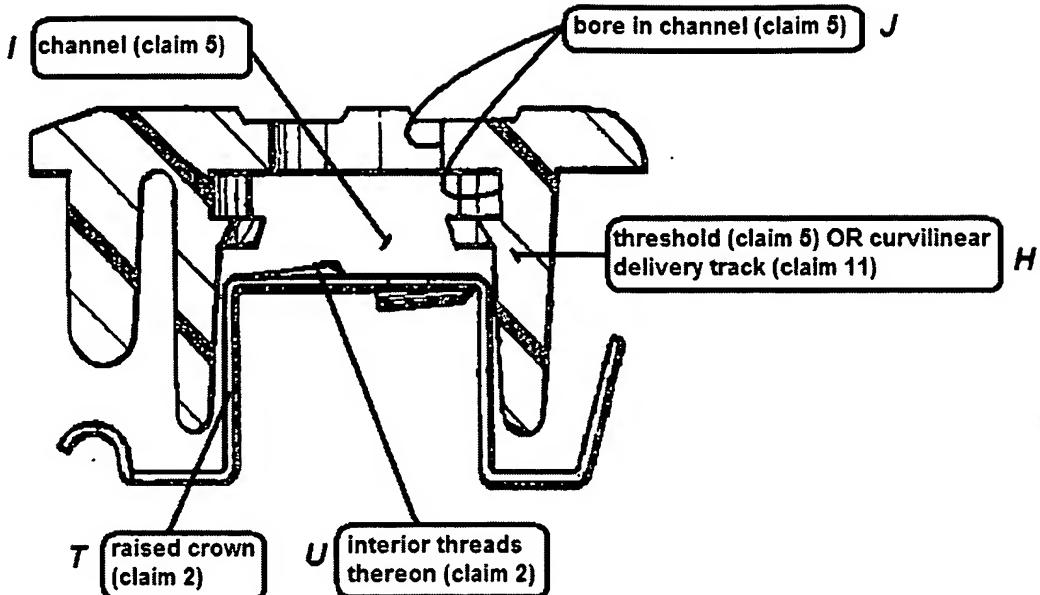
In response to Applicant's argument that the examiner has not shown the bounds or the extent of the channel is irrelevant. Applicant merely claims a (broad) "channel", and gives no such limitation to the "bounds or extent of the channel". In order for Bursk et al. to anticipate claim 5, Bursk et al. must show a channel (I) in a threshold (H), said channel (I) having a bore (J) therein. Examiner has clearly demonstrated that Bursk et al. discloses these limitations.



Examiner's reasonably broad interpretation of Bursk et al. US-4,352,258.

Issue 2 in regard to claim 6

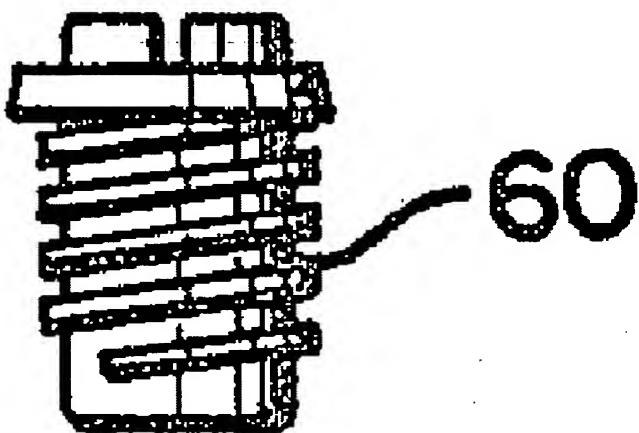
Applicant's argument that the rectangularly-shaped nut taught by Bursk et al. is not constrained against rotation by the channel of the threshold is not persuasive. Threshold (H) has a channel (I), in which at least the raised crown (T) and interior threads (U) of the rectangularly-shaped nut (B) reside in. Since the nut (B) is rectangularly shaped and has two faces held against rails of threshold (H) forming the channel (I), it is held in non-rotatable fashion in said channel (I).



Examiner's reasonably broad interpretation of Bursk et al. US-4,352,258.

Issue 2 in regard to claim 7

Examiner acknowledges Applicant's statement that in the Bursk et al. reference, "it appears that screw 60 does have a flat head and is adjustable in a plurality of positions" (emphasis added). Claim 7 of the instant application states: "A threshold adjustment device....wherein said threaded stud includes a flat head and is adjustable in a plurality of positions". Therefore, it appears that Applicant is in agreement with the examiner that the Bursk et al. reference anticipates at least those limitations found in claim 7.



Examiner's reasonably broad interpretation of Bursk et al. US-4,352,258.

Issue 2 in regard to claim 8

In response to Applicant's argument that the threaded stud taught by Bursk et al. does not "threadedly engage" the channel of the threshold, the examiner takes the position that once the threaded stud (A) is press-fit into the threshold (H), the threads of the threaded stud (A) make contact with at least a portion (67,68) of the threshold (H) which defines the channel (I). The term "threadingly" has been given its broadest reasonable interpretation.

Examiner acknowledges Applicant's agreement that the minor informality of the word "devices" (claim 8 line 1) should instead read "device".

Issue 2 in regard to claim 9

In response to Applicant's argument that Examiner has not attempted to identify a first surface of the rectangular nut in the provided diagram is not persuasive. Examiner has provided Applicant with supplemental diagrams, solely for purpose of improving communication, expediting prosecution, clearly identifying the issues at hand, and providing a quality Office Action. It would be readily apparent that a first surface of at least the raised crown (T) of the

rectangularly-shaped nut makes contact with the channel, similarly to what Applicant describes as "apparent contact of leg 83 of the nut 65 engaging leg 52 of threshold 22".

Examiner notes that a "channel" has been construed by the examiner as an *absence* of material surrounded by material which forms said channel. Therefore, in order to "engage" the channel of the threshold figuratively speaking, the threshold material surrounding and forming the channel must also be "engaged".

Issue 2 in regard to claim 10

For at least the reasons above for Issue 2 in regard to claims 5, 7 and 9, the examiner feels that the rejection of claim 10 under 35 U.S.C. 102(b) as being anticipated by Bursk et al. US-4,352,258 is proper.

Issue 2 in regard to claim 11

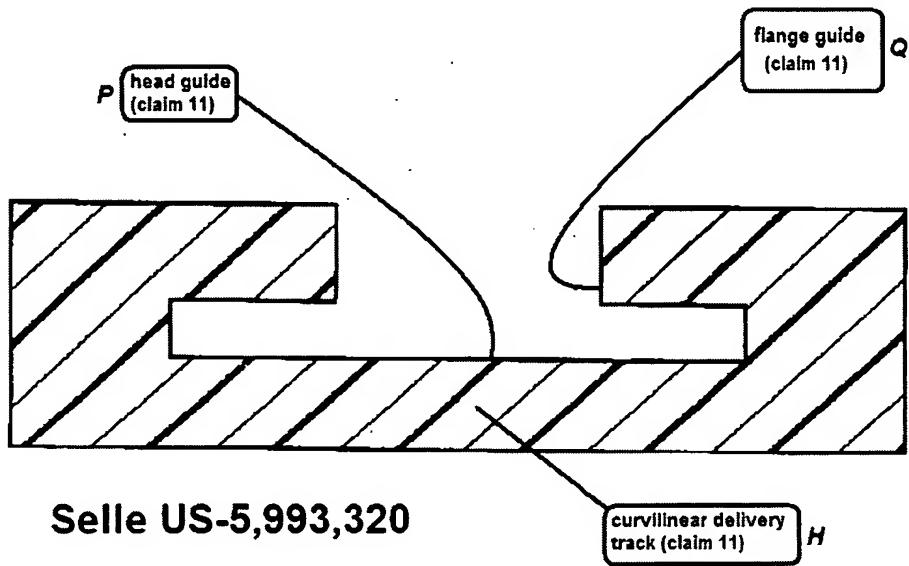
All arguments made by Applicant are moot, since examiner made no such rejection of claim 11 under 35 U.S.C. 102(b) as being anticipated by Bursk et al. US-4,352,258

► In response to Issue 3, Applicant's arguments have been fully considered, but are not persuasive. Claim 11 stands rejected under 35 U.S.C. 102(b) as being anticipated by Selle US-5,993,320.

Issue 3 in regard to claim 11

As indicated in the above rejection, Examiner disagrees with Applicant that Selle fails to include a head guide and a flange guide. It was stated to Applicant in the final rejection mailed on 31 October 2005 that the examiner has interpreted claim 11 as not positively reciting the "fastener", "threaded stud", "support head", "U-shaped nuts", and "rearward and forward flanges". However, claim 11 does positively recite "a curvilinear delivery track", "a head guide",

and "a flange guide -- all of which are taught by Selle US-5,993,320 (see below drawing). The preamble of claim 11 states that the intended use of the curvilinear delivery track is "for delivering a plurality of fasteners..." and then goes on to recite certain structural features of said fasteners, and how they would interact with the curvilinear delivery track when "said head guides of said delivery track engage said support heads of said fasteners" and when "said support heads of said fasteners [are] in combination with said head guide". Examiner acknowledges Applicant's statement that "the claim lacks a positive recitation of the threaded stud having support head is correct".



Selle US-5,993,320

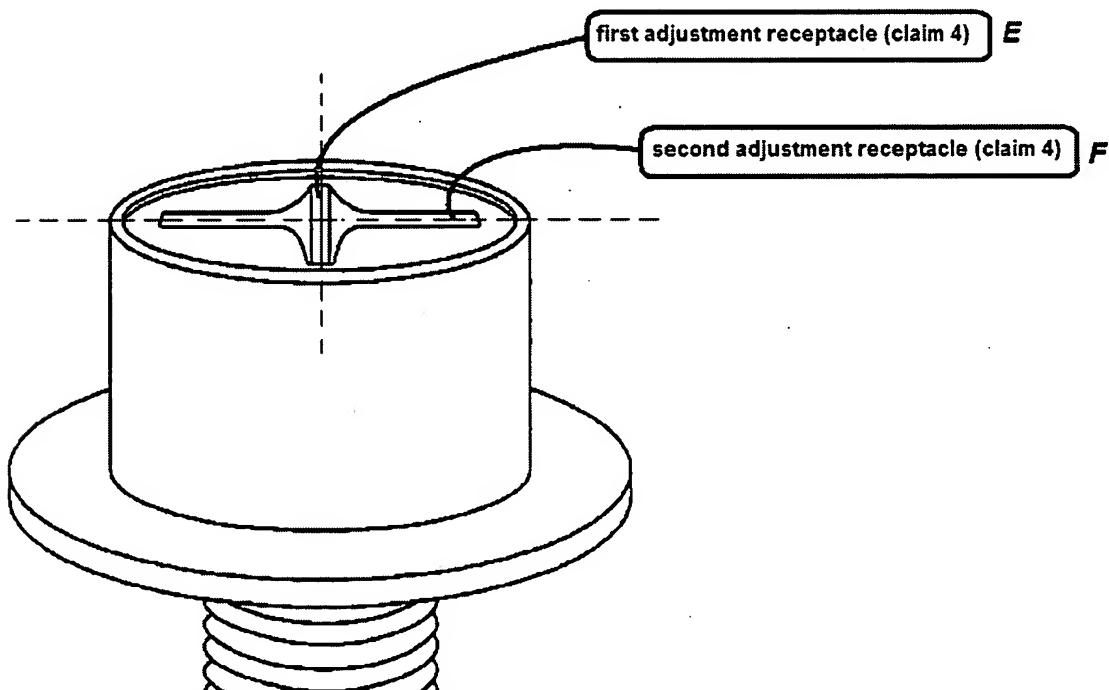
Examiner's reasonably broad interpretation of Selle US-5,993,320.

In response to Applicant's citation of MPEP 2143.01 which is drawn to obviousness, the examiner would like to point out that the rejection at hand is a rejection under 35 U.S.C. 102(b), and not a rejection under 35 U.S.C. 103(a). In the instant case, there are no two references to be combined, and therefore, arguments over motivation are irrelevant.

► In response to Issue 4, Applicant's arguments have been fully considered, but are not persuasive. Claim 4 stands rejected under 35 U.S.C. 103(a) as being obvious over Bursk et al. US-4,352,258 in view of Mettler US-6,185,870.

Issue 4 in regard to claim 4

Applicant's argument that Mettler US-6,185,870 does not include two adjustment receptacles as claimed is not persuasive. Mettler clearly shows two adjustment receptacles (E) and (F). The purpose for providing a second adjustment receptacle is to allow both a flat head screwdriver, AND a Phillips head screwdriver to adjust the threaded stud.



Examiner's reasonably broad interpretation of Mettler US-6,185,870

Examiner acknowledges Applicant's statement that "Mettler and Bursk et al. [both] concern threshold design". Therefore, it appears that both parties agree that the references are within the same general field of endeavor.

Applicant's argument that the Applicant's invention does not employ features (e.g., Bursk et al.'s base 20) taught by Mettler and/or Bursk et al. is not relevant. The prior art is to be relied upon for what it teaches or suggests to one of ordinary skill in the art. The mere possibility that the prior art discloses more than what is sought after by Applicant does not overcome a *prima facie* case of obviousness.

► In response to Issue 5, Applicant's arguments have been fully considered, but are not persuasive. Claims 1 and 3-11 stand rejected under 35 U.S.C. 103(a) as being obvious over Applicant's admission of prior art, in view of either Selle US-6,640,968 or Liestner US-6,209,722.

Applicant is directed to the above rejection which has more clearly presented a valid demonstration of *prima facie* obviousness.

Issue 5 in regard to claim 1

The argument that claim 1 does not recite a threshold, a channel, and a bore therein is irrelevant, since all of the claims in the instant application (including claims 5-10 which do recite a threshold, a channel, and a bore) were grouped and rejected under the same art.

Applicant's argument that "in the prior art, the threaded stud and the rectangularly-shaped nut do not interengage each other because they are one piece" is not persuasive, because on page 2, line 17, Applicant states that the prior art teaches or at least suggests "a reciprocally threaded nut is also carried with the stud". What Applicant describes as "one piece" in the remarks is actually a "threaded stud interengaging a nut". Even if, *arguendo*, Applicant's admission of prior art did show a threaded stud and a rectangularly-shaped nut as one integral piece, it has

been held by the courts that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Examiner acknowledges Applicant's allegation that Selle US-6,640,968 "teaches lips or wings (301,302) which are guided in the slot denoted by reference numeral 602 in Selle", and that Selle "does not use the word *flange*". However, the examiner's duty is to examine all claims in a pending application using the broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). In the instant case, a "lip" or "wing" may be broadly construed as a "flange". As stated above, the term "flange" has been plainly defined as:

flange

n : a projection used for strength or for attaching to another object.

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flange (flānj)

n.

2. A projecting rim or edge.

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Applicant's attempt to disqualify the Liestner US-6,209,722 patent as a valid reference for teaching "flanges" is not persuasive. It appears that Applicant is arguing that since Liestner's flanges are shown in a preferred embodiment to be "octagonal" in shape, the technology is different. Examiner respectfully disagrees. Applicant makes no limitation to the shape of "flange(s)" as claimed in claims 1-10 of the present application whatsoever. For that reason alone, attacking Liestner's flanges over shape is improper. In response to Applicant's statement

that Liestner is a deficient teaching reference because it does not use the exact word "flange", it is the examiner's duty is to examine all claims in a pending application using the broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). In the instant case, although Liestner prefers the terms "prongs or spikes 16", the examiner has broadly construed these to be "flanges".

In response to Applicant's arguments that that there is no suggestion to combine Applicant's admission of prior art with the Liestner US-6,209,722 and/or Selle US-6,640,968 references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Selle and Liestner suggest raised flanges at the ends of track-fed fasteners to prevent shingling. The fact that the fasteners may comprise nuts or washers is not important. What is most important, is that the Liestner and Selle patents suggest **raised flanges** at first and second ends of a fastener, in order to prevent jamming of said fasteners within a curvilinear delivery track or threshold, since said flanges serve to prevent the fasteners from overriding each other.

In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's argument that Selle's "lips 301, 302 are for guidance in the track, [and] not to prevent shingling" is not persuasive, because in order for proper "guidance" to occur, "shingling" cannot occur. Moreover, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Therefore, so long as Selle discloses **raised flanges**, Selle satisfies those structural limitations not taught in Applicant's admission of prior art. For all intents and purposes, if Selle suggests that putting raised flanges 301, 302 on a fastener would "provide guidance in a track" as stated by Applicant in the remarks, then it would be obvious in view of Selle to provide raised flanges to the fastener taught by Applicant for AT LEAST the purpose of "guidance in a track".

In response to Applicant's argument that a "raised flange" is not taught by Liestner, since Liestner prefers the terminology "prongs or spikes", the Applicant is reminded that claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). In the instant case, a "prong or spike" may be broadly construed as a "raised flange".

flange

n : a projection used for strength or for attaching to another object.

Source: WordNet ® 2.0, © 2003 Princeton University

flange (flānj)

n.

1. A projecting rim or edge.

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Issue 5 in regard to claim 2

As stated above, the rejection of claim 2 under 35 U.S.C. 103(a) as being obvious over Applicant's admission of prior art, in view of either Selle US-6,640,968 or Liestner US-6,209,722 has been withdrawn after further consideration. Therefore, all Issue 5 arguments with regard to claim 2 are moot.

However, Examiner would like to point out that at least the Liestner US-6,209,722 reference suggests a crown (12) having interior threads thereon, since the nut is manufactured from sheet material. For those nuts manufactured from thin sheet material, it is usually necessary to employ a raised crown having interior threads thereon, in order to maintain a satisfactory threaded length of engagement with a threaded stud, and work harden the surrounding material for strength.

Issue 5 in regard to claim 3

In response to Applicant's question, it would be obvious to one of ordinary skill in the art, that Liestner's raised flanges (16) and/or Selle's raised flanges (301,302) would at least partially "envelope" the threaded stud (103) disclosed as prior art by Applicant. Examiner respectfully disagrees with Applicant's allegation that "none of the references suggest or disclose raised flanges". Liestner discloses raised flanges (16), and Selle discloses raised flanges (301,302).

Issue 5 in regard to claim 4

It appears that Applicant's argument for claim 4, is that "none of the references suggest two receptacles as they are used differently, one from each end of the device". This argument is not persuasive, firstly because nowhere in claim 4 does Applicant positively require: 1) the location of the receptacles relative to one another, and/or 2) the purpose of each receptacle.

Simply put, when given its broadest reasonable interpretation, one of ordinary skill in the art would deem "a first and second adjustment receptacle" as two receptacles that would allow for "adjustment". Secondly, Applicant's admission of prior art clearly shows a threaded stud having two adjustment receptacles (104,105) -- one on each end. Therefore, even if, *arguendo*, Selle and/or Liestner are silent of two adjustment receptacles, Applicant's admission teaches first and second adjustment receptacles (104,105) -- one on each end.

Issue 5 in regard to claim 5

In response to Applicant's remarks that the combination made by the Examiner does not "teach or suggest the studs being press-fit into the channel", the Examiner would like to direct Applicant's attention to page 2, line 14 of the instant specification, which discloses that in the prior art, "the insertion mechanism press-fits a threaded stud into and through a wall of the threshold".

Issue 5 in regard to claims 6 and 7

While Applicant believes that the fasteners found in Selle and Liestner are not relevant for use in a threshold, Examiner respectively disagrees. Applicant is directed to cited reference US-6,185,870 to Mettler, which shows a t-nut (12) used in an "adjustable threshold assembly", said t-nut having flanges (26, 27) -- some (26) of which reside in a channel of a threshold (14), the channel constraining the nut (12) against rotation, said assembly further comprising a threaded stud (1) being press fitted into a bore (16) in said threshold (14), said stud (1) having adjustment receptacles (8,9). Therefore, it would not be "unobvious" for a worker in the art to combine at least the Liestner reference.

Issue 5 in regard to claim 8

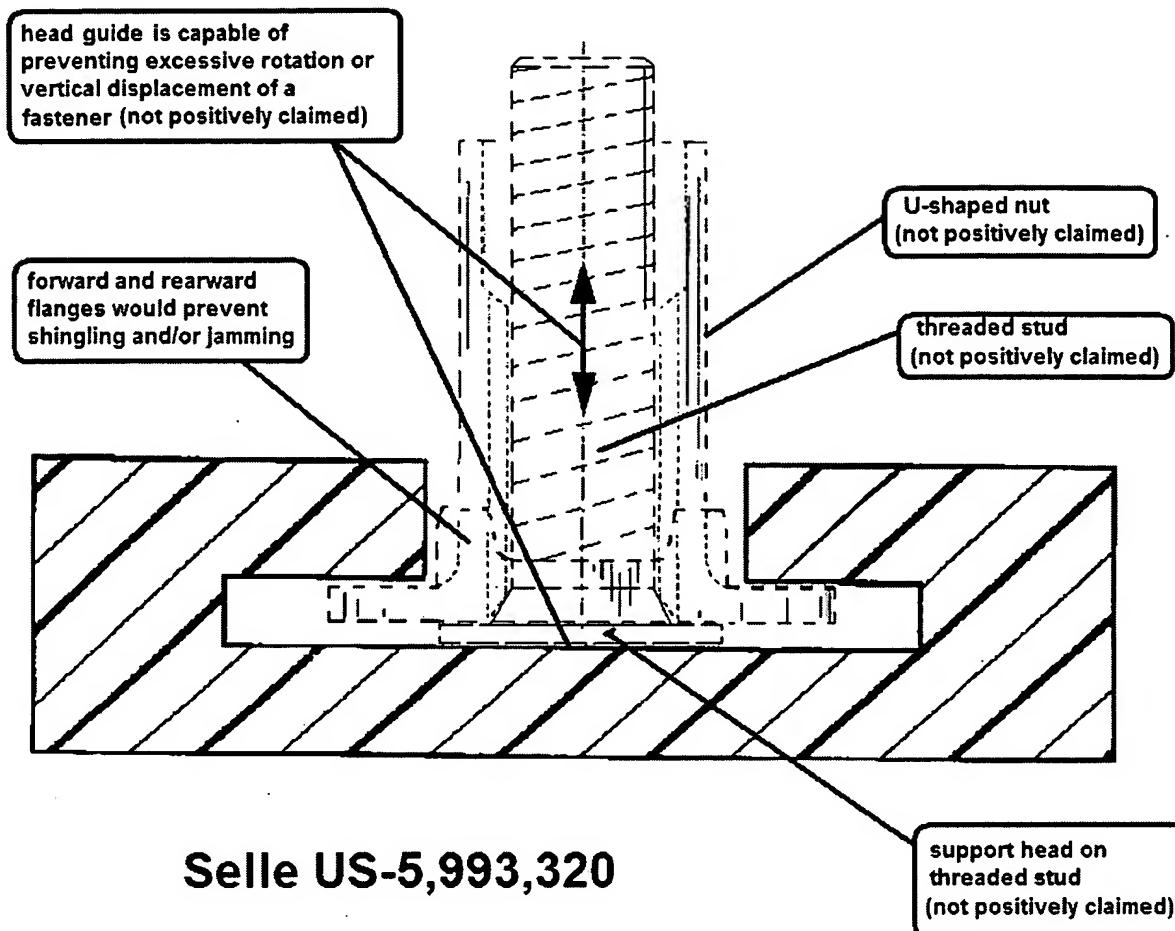
In response to Applicant's statement that none of the references teach a threaded stud engaging the channel of a threshold, Examiner disagrees. Page 2 lines 13-21 of the instant specification teaches or at least strongly suggests that it is already known to provide threaded studs which threadingly engage a channel of a threshold.

Issue 5 in regard to claims 9 and 10

Applicant argues that since claims 9 and 10 recite the limitation "the nut engages said channel", and neither Liestner or Selle allegedly suggest this, the rejection is improper. Examiner respectfully disagrees. Examiner directs Applicant's attention to page 2 lines 13-21 of the instant specification, which teaches or at least strongly suggests a nut engaging a channel in a threshold.

Issue 5 in regard to claim 11

It appears that Applicant invites the Examiner to provide an example of how the track of Selle US-6,640,968 may be used and adapted to accommodate the support head of a threaded stud (not positively claimed) and limit its vertical movement, should the idea be entertained. As illustrated in the formal rejection above, the curvilinear delivery track taught by Selle is at least capable of accommodating a support head of both a threaded stud and nut having flanges, said curvilinear delivery track limiting the vertical movement of the threaded stud.



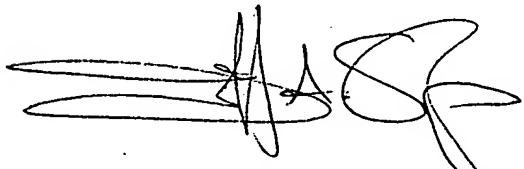
Examiner's reasonably broad interpretation of Selle US-5,993,320.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Jeffrey Andrew Sharp

Examiner AU 3677

Conferees:

Judy Swann 

Dan Stodola 



JJ Swann
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